

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DANIEL J. RIVAS,

Plaintiff,

vs.

PADILLA et al.,

Defendants.

1:21-cv-00212-GSA-PC

SCREENING ORDER

**ORDER DISMISSING COMPLAINT FOR
VIOLATION OF RULE 8(a), WITH
LEAVE TO FILE AN AMENDED
COMPLAINT NOT EXCEEDING 25
PAGES**

THIRTY-DAY DEADLINE

**ORDER FOR CLERK TO SEND
PLAINTIFF A CIVIL COMPLAINT
FORM**

I. BACKGROUND

Daniel J. Rivas ("Plaintiff") is a state prisoner proceeding *pro se* with this civil rights action pursuant to 42 U.S.C. § 1983. On February 19, 2021, Plaintiff filed the Complaint commencing this action, which is now before the court for screening. 28 U.S.C. § 1915A. (ECF No. 1.)

II. SCREENING REQUIREMENT

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The

1 court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally
 2 “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek
 3 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).
 4 “Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall
 5 dismiss the case at any time if the court determines that the action or appeal fails to state a claim
 6 upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

7 A complaint is required to contain “a short and plain statement of the claim showing that
 8 the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
 9 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
 10 conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell
 11 Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). While a plaintiff’s allegations are taken
 12 as true, courts “are not required to indulge unwarranted inferences.” Doe I v. Wal-Mart Stores,
 13 Inc., 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted). To state
 14 a viable claim, Plaintiff must set forth “sufficient factual matter, accepted as true, to ‘state a claim
 15 to relief that is plausible on its face.’” Iqbal, 556 U.S. at 678-79; Moss v. U.S. Secret Service,
 16 572 F.3d 962, 969 (9th Cir. 2009). While factual allegations are accepted as true, legal
 17 conclusions are not. Id. The mere possibility of misconduct falls short of meeting this
 18 plausibility standard. Id.

19 **III. PLAINTIFF’S COMPLAINT**

20 Plaintiff is presently incarcerated at the California Substance Abuse Treatment Facility
 21 and State Prison (“SATF”) in Corcoran, California, where the events at issue in the Complaint
 22 allegedly occurred. Plaintiff names as defendants Correctional Officer (C/O) Padilla, C/O Clark,
 23 and Does #1-#6 (collectively, “Defendants”), who were all employed at SATF during the relevant
 24 time period.

25 The gravamen of Plaintiff’s Complaint is that some SATF Correctional Officers retaliated
 26 against him for filing a civil case at this court against other SATF Correctional Officers.

27 Plaintiff requests monetary damages, including punitive damages, costs of suit, injunctive
 28 relief, and reasonable attorney fees.

Rule 8(a) of The Federal Rules Of Civil Procedure

Rule 8(a)'s simplified pleading standard applies to all civil actions, with limited exceptions, none of which apply to § 1983 actions. Swierkiewicz v. Sorema, N.A., 534 U.S. 506, 512 (2002). Under federal notice pleading, a complaint is required to contain "a short and plain statement of the claim showing that the pleader is entitled to relief" Fed. R. Civ. P. 8(a)(2). "Such a statement must simply give defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." Id. The federal rules contemplate brevity. See Galbraith v. County of Santa Clara, 307 F.3d 1119, 1125 (9th Cir. 2002) (noting that "nearly all of the circuits have now disapproved any heightened pleading standard in cases other than those governed by Rule 9(b)"); Fed. R. Civ. P. 84; cf. Rule 9(b) (setting forth rare exceptions to simplified pleading). Rule 8 requires Plaintiff to set forth his claims in short and plain terms, simply, concisely and directly. See Swierkiewicz, 534 U.S. at 514 ("Rule 8(a) is the starting point of a simplified pleading system, which was adopted to focus litigation on the merits of a claim."); Fed. R. Civ. P. 8. The Court (and each defendant) should be able to read and understand Plaintiff's pleading within minutes. McHenry v. Renne, 84 F.3d 1172, 1179–80 (9th Cir. 1996).

Plaintiff's Complaint fails to comport with Rule 8(a)'s requirement for "a short and plain statement of the claim showing that the pleader is entitled to relief." Plaintiff's Complaint is 35 pages in length and contains 68 numbered paragraphs and a declaration by Plaintiff. (ECF No. 1.) Plaintiff's lengthy narrative does not clearly or succinctly allege facts against the named defendants. The court will dismiss the Complaint and grant Plaintiff leave to file a First Amended Complaint not exceeding 25 pages. The total number of pages, including the form complaint and any exhibits, must not exceed 25 pages. If typewritten, the body of the First Amended Complaint must be double-spaced. If handwritten, the Complaint must be legible and written in reasonably-sized handwriting. If Plaintiff fails to comport with these requirements, the First Amended Complaint may be dismissed or stricken from the record for failure to comply with the court's order. Plaintiff should not include legal analysis in the First Amended Complaint, and he is not required to include information about exhaustion of administrative remedies.

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1 In the following paragraphs, the court shall set forth the legal standards that appear to
2 address Plaintiff's claims. Plaintiff is advised to review the legal standards before deciding what
3 to include in the amended complaint.

4 **IV. PLAINTIFF'S CLAIMS**

5 **A. 42 U.S.C. § 1983**

6 The Civil Rights Act under which this action was filed provides:

7 Every person who, under color of any statute, ordinance, regulation, custom, or
8 usage, of any State or Territory or the District of Columbia, subjects, or causes to
9 be subjected, any citizen of the United States or other person within the
10 jurisdiction thereof to the deprivation of any rights, privileges, or immunities
secured by the Constitution and laws, shall be liable to the party injured in an
action at law, suit in equity, or other proper proceeding for redress

11 42 U.S.C. § 1983. "[Section] 1983 'is not itself a source of substantive rights,' but merely
12 provides 'a method for vindicating federal rights elsewhere conferred.'" Graham v. Connor, 490
13 U.S. 386, 393-94 (1989) (quoting Baker v. McCollan, 443 U.S. 137, 144 n.3 (1979)); see also
14 Chapman v. Houston Welfare Rights Org., 441 U.S. 600, 618 (1979); Hall v. City of Los Angeles,
15 697 F.3d 1059, 1068 (9th Cir. 2012); Crowley v. Nevada, 678 F.3d 730, 734 (9th Cir. 2012);
16 Anderson v. Warner, 451 F.3d 1063, 1067 (9th Cir. 2006).

17 To state a claim under section 1983, a plaintiff must allege that (1) the defendant acted
18 under color of state law and (2) the defendant deprived him of rights secured by the Constitution
19 or federal law. Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir. 2006); see also
20 Marsh v. Cnty. of San Diego, 680 F.3d 1148, 1158 (9th Cir. 2012) (discussing "under color of
21 state law"). A person deprives another of a constitutional right, "within the meaning of § 1983,
22 'if he does an affirmative act, participates in another's affirmative act, or omits to perform an act
23 which he is legally required to do that causes the deprivation of which complaint is made.'" Preschooler II v. Clark Cnty. Sch. Bd. of Trs., 479 F.3d 1175, 1183 (9th Cir. 2007) (quoting
24 Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978)). "The requisite causal connection may be
25 established when an official sets in motion a 'series of acts by others which the actor knows or
26 reasonably should know would cause others to inflict' constitutional harms." Preschooler II, 479
27 F.3d at 1183 (quoting Johnson, 588 F.2d at 743). This standard of causation "closely resembles
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the standard ‘foreseeability’ formulation of proximate cause.” Arnold v. Int’l Bus. Mach. Corp., 637 F.2d 1350, 1355 (9th Cir. 1981); see also Harper v. City of Los Angeles, 533 F.3d 1010, 1026 (9th Cir. 2008).

B. Retaliation – First Amendment Claim

As discussed by the Ninth Circuit in Watison v. Carter:

“A retaliation claim has five elements. Brodheim v. Cry, 584 F.3d 1262, 1269 (9th Cir. 2009). First, the plaintiff must allege that the retaliated-against conduct is protected. The filing of an inmate grievance is protected conduct. Rhodes v. Robinson, 408 F.3d 559, 568 (9th Cir. 2005).

Second, the plaintiff must claim the defendant took adverse action against the plaintiff. Id. at 567. The adverse action need not be an independent constitutional violation. Pratt v. Rowland, 65 F.3d 802, 806 (9th Cir. 1995). “[T]he mere *threat* of harm can be an adverse action....” Brodheim, 584 F.3d at 1270.

Third, the plaintiff must allege a causal connection between the adverse action and the protected conduct. Because direct evidence of retaliatory intent rarely can be pleaded in a complaint, allegation of a chronology of events from which retaliation can be inferred is sufficient to survive dismissal. See Pratt, 65 F.3d at 808 (“timing can properly be considered as circumstantial evidence of retaliatory intent”); Murphy v. Lane, 833 F.2d 106, 108–09 (7th Cir. 1987).

Fourth, the plaintiff must allege that the “official's acts would chill or silence a person of ordinary firmness from future First Amendment activities.” Robinson, 408 F.3d at 568 (internal quotation marks and emphasis omitted). “[A] plaintiff who fails to allege a chilling effect may still state a claim if he alleges he suffered some other harm,” Brodheim, 584 F.3d at 1269, that is “more than minimal,” Robinson, 408 F.3d at 568 n.11. That the retaliatory conduct did not chill the plaintiff from suing the alleged retaliator does not defeat the retaliation claim at the motion to dismiss stage. Id. at 569.

1 Fifth, the plaintiff must allege “that the prison authorities' retaliatory
 2 action did not advance legitimate goals of the correctional institution....” Rizzo
 3 v. Dawson, 778 F.2d 527, 532 (9th Cir.1985). A plaintiff successfully pleads this
 4 element by alleging, in addition to a retaliatory motive, that the defendant's actions
 5 were arbitrary and capricious, id., or that they were “unnecessary to the
 6 maintenance of order in the institution,” Franklin v. Murphy, 745 F.2d 1221, 1230
 7 (9th Cir.1984).”

8 Watson v. Carter, 668 F.3d 1108, 1114-15 (9th Cir. 2012).

9 **C. Excessive Force – Eighth Amendment Violation**

10 What is necessary to show sufficient harm for purposes of the Cruel and Unusual
 11 Punishments Clause [of the Eighth Amendment] depends upon the claim at issue” Hudson
 12 v. McMillian, 503 U.S. 1, 8 (1992). “The objective component of an Eighth Amendment claim
 13 is . . . contextual and responsive to contemporary standards of decency.” Id. (internal quotation
 14 marks and citations omitted). The malicious and sadistic use of force to cause harm always
 15 violates contemporary standards of decency, regardless of whether or not significant injury is
 16 evident. Id. at 9; see also Oliver v. Keller, 289 F.3d 623, 628 (9th Cir. 2002) (Eighth Amendment
 17 excessive force standard examines *de minimis* uses of force, not *de minimis* injuries)). However,
 18 not “every malevolent touch by a prison guard gives rise to a federal cause of action.” Id. at 9.
 19 “The Eighth Amendment’s prohibition of cruel and unusual punishments necessarily excludes
 20 from constitutional recognition *de minimis* uses of physical force, provided that the use of force
 21 is not of a sort ‘repugnant to the conscience of mankind.’” Id. at 9-10 (internal quotations marks
 22 and citations omitted).

23 “[W]henver prison officials stand accused of using excessive physical force in violation
 24 of the Cruel and Unusual Punishments Clause, the core judicial inquiry is . . . whether force was
 25 applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to
 26 cause harm.” Id. at 7. “In determining whether the use of force was wanton and unnecessary, it
 27 may also be proper to evaluate the need for application of force, the relationship between that
 28 need and the amount of force used, the threat reasonably perceived by the responsible officials,

and any efforts made to temper the severity of a forceful response.” Id. (internal quotation marks and citations omitted). “The absence of serious injury is . . . relevant to the Eighth Amendment inquiry, but does not end it.” Id.

D. Confiscation of Personal Property

Prisoners have a protected interest in their personal property. Hansen v. May, 502 F.2d 728, 730 (9th Cir. 1974). However, a plaintiff has no due process claim based on the defendants’ unauthorized deprivation of his personal property—whether intentional or negligent—if a meaningful state post-deprivation remedy for his loss is available. See Hudson, 468 U.S. at 533. California’s tort claim process provides that adequate post-deprivation remedy. Barnett v. Centoni, 31 F.3d 813, 816–17 (9th Cir. 1994) (citing Cal. Gov’t Code §§ 810–895) (“[A] negligent or intentional deprivation of a prisoner’s property fails to state a claim under section 1983 if the state has an adequate post deprivation remedy.”); see also Teahan v. Wilhelm, 481 F. Supp. 2d 1115, 1120 (S.D. Cal. 2007); Kemp v. Skolnik, No. 2:09-CV-02002-PMP, 2012 WL 366946, at *6 (D. Nev. Feb. 3, 2012) (finding prisoner’s alleged loss or destruction of newspaper, magazines, and books failed to state a Fourteenth Amendment claim pursuant to Hudson and noting that “[i]f Plaintiff wishes to recoup the value of the alleged lost materials, he will have to file a claim in small claims court in state court.”).

E. Due Process – Fourteenth Amendment

The Due Process Clause protects against the deprivation of liberty without due process of law. Wilkinson v. Austin, 545 U.S. 209, 221, 125 S.Ct. 2384, 2393 (2005). In order to invoke the protection of the Due Process Clause, a plaintiff must first establish the existence of a liberty interest for which the protection is sought. Id. Liberty interests may arise from the Due Process Clause itself or from state law. Id.

Under state law, the existence of a liberty interest created by prison regulations is determined by focusing on the nature of the deprivation. Sandin v. Conner, 515 U.S. 472, 481–84, 115 S.Ct. 2293 (1995). Liberty interests created by state law are “generally limited to freedom from restraint which . . . imposes atypical and significant hardship on the inmate in

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relation to the ordinary incidents of prison life.” Id. at 484; Myron v. Terhune, 476 F.3d 716, 718 (9th Cir. 2007).

Prison disciplinary proceedings are not part of a criminal prosecution, and the full panoply of rights due a defendant in such proceedings does not apply.” Wolff v. McDonnell 418 U.S. 539, 556 (1974). With respect to prison disciplinary proceedings, the minimum procedural requirements that must be met are: (1) written notice of the charges; (2) at least 24 hours between the time the prisoner receives written notice and the time of the hearing, so that the prisoner may prepare his defense; (3) a written statement by the fact finders of the evidence they rely on and reasons for taking disciplinary action; (4) the right of the prisoner to call witnesses in his defense, when permitting him to do so would not be unduly hazardous to institutional safety or correctional goals; and (5) legal assistance to the prisoner where the prisoner is illiterate or the issues presented are legally complex. Id. at 563–71. In addition “[s]ome evidence” must support the decision of the hearing officer. Superintendent v. Hill, 472 U.S. 445, 455 (1985). The standard is not particularly stringent and the relevant inquiry is whether “there is any evidence in the record that could support the conclusion reached” Id. at 455–56.

F. Verbal Threats and Harassment

Verbal harassment or abuse alone is not sufficient to state a claim under section 1983, Oltarzewski v. Ruggiero, 830 F.2d 136, 139 (9th Cir. 1987), and threats do not rise to the level of a constitutional violation, Gaut v. Sunn, 810 F.2d 923, 925 (9th Cir. 1987).

G. Doe Defendants

Unidentified, or “John Doe” defendants must be named or otherwise identified before service can go forward. “As a general rule, the use of ‘John Doe’ to identify a defendant is not favored.” Gillespie v. Civiletti, 629 F.2d 637, 642 (9th Cir. 1980). Plaintiff is advised that John Doe or Jane Doe defendants cannot be served until Plaintiff has identified them as actual individuals and amended his complaint to substitute names for John Doe or Jane Doe. For service to be successful, the Marshal must be able to identify and locate defendants.

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V. CONCLUSION AND ORDER

The court finds that Plaintiff's Complaint violates Rule 8(a) of the Federal Rules of Civil Procedure. The court will dismiss the Complaint and grant Plaintiff leave to file a First Amended Complaint not exceeding 25 pages. The total number of pages, including the form complaint and any exhibits, must not exceed 25 pages. If typewritten, the body of the First Amended Complaint must be double-spaced. If handwritten, the Complaint must be legible and written in reasonably-sized handwriting. If Plaintiff fails to comport with these requirements, the First Amended Complaint may be dismissed or stricken from the record for failure to comply with the court's order.

Under Rule 15(a) of the Federal Rules of Civil Procedure, "[t]he court should freely give leave to amend when justice so requires." Accordingly, the court will provide Plaintiff an opportunity to file an amended complaint not exceeding 25 pages. Lopez v. Smith, 203 F.3d 1122, 1126-30 (9th Cir. 2000). Plaintiff is granted leave to file the First Amended Complaint within thirty days.

The First Amended Complaint must allege facts showing what each named defendant did that led to the deprivation of Plaintiff's constitutional rights. Fed. R. Civ. P. 8(a); Iqbal, 556 U.S. at 678; Jones, 297 F.3d at 934. Plaintiff must demonstrate that each defendant *personally* participated in the deprivation of his rights by their actions. Id. at 676-77 (emphasis added).

In the amended complaint, Plaintiff should include only those facts needed to state his claims against each defendant, and there is no need for legal citations, arguments, or hypothetical examples.

Plaintiff should note that although he has been given the opportunity to amend, it is not for the purpose of changing the nature of this suit or adding unrelated claims. George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007) (no "buckshot" complaints). Plaintiff is also advised that he has not been granted leave to include allegations of events occurring after the initiation of this lawsuit on February 19, 2021.

Plaintiff is advised that an amended complaint supersedes the original complaint, Lacey v. Maricopa County, 693 F.3d 896, 907 n.1 (9th Cir. 2012) (*en banc*), and it must be complete in

1 itself without reference to the prior or superseded pleading, Local Rule 220. Therefore, in an
2 amended complaint, as in an original complaint, each claim and the involvement of each
3 defendant must be sufficiently alleged. The amended complaint should be clearly and boldly
4 titled “First Amended Complaint,” refer to the appropriate case number, and be an original signed
5 under penalty of perjury.

6 Based on the foregoing, it is **HEREBY ORDERED** that:

- 7 1. Plaintiff’s Complaint is dismissed for violation of Rule 8(a), with leave to amend;
- 8 2. The Clerk’s Office shall send Plaintiff a civil rights complaint form;
- 9 3. Plaintiff is granted leave to file a First Amended Complaint not exceeding 25
10 pages, within **thirty (30) days** from the date of service of this order;
- 11 4. The total number of pages of the First Amended Complaint, including the form
12 complaint and any exhibits, must not exceed 25 pages. If typewritten, the body
13 of the First Amended Complaint must be double-spaced. If handwritten, the
14 Complaint must be legible and written in reasonably-sized handwriting;
- 15 5. Plaintiff shall caption the amended complaint “First Amended Complaint” and
16 refer to the case number 1:21-cv-00212-GSA-PC; and
- 17 6. If Plaintiff fails to file a First Amended Complaint in compliance with this order
18 within thirty days, the complaint may be stricken from the record, or this case may
19 be dismissed for failure to comply with a court order.

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21 IT IS SO ORDERED.

22 Dated: March 4, 2022

/s/ Gary S. Austin
23 UNITED STATES MAGISTRATE JUDGE
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